



**CITY OF LODI  
COUNCIL COMMUNICATION**

**AGENDA TITLE:** Authorize the Mayor, on Behalf of the City Council, to Send a Letter in Support of H.R. 1746, the "Community Access Preservation Act"

**MEETING DATE:** December 21, 2011

**PREPARED BY:** City Manager

**RECOMMENDED ACTION:** Authorize the Mayor, on behalf of the City Council, to send a letter in support of H.R. 1746, the "Community Access Preservation Act."

**BACKGROUND INFORMATION:** For several decades, local cable franchise operators were required to pay the cost of operating the Public, Education and Government (PEG) channel within the City of Lodi as part of their local franchise agreements. Following enactment of the State Digital Infrastructure and Competition Act of 2006 (DIVCA), cable operators could opt for a State franchise, rather than negotiate with local governments, and not be required to provide that staffing support.

While the City's benefit under DIVCA is the ability to collect a 1 percent fee to fund PEG operations, the law does not allow those dollars to fund operation costs, such as paying for a camera operator at City Council meetings. DIVCA defers to federal law in defining allowable PEG expenses, and federal law limits these to capital costs. As a result, Lodi's General Fund now supports the cost of a camera operator following Comcast's transition to a State video franchise.

City staff previously approached our local State representative seeking a change in DIVCA to allow for operating expenses, but without success.

Earlier this year, U.S. Reps. Tammy Baldwin (D-Wisc.) and Steve LaTourette (R-Ohio) introduced H.R. 1746, the Community Access Preservation Act (CAP Act). The legislation, if adopted, would allow PEG funds to be used for operating expenses, prevent operators from discriminating against PEG channels, and make it clear that any entity that provides video services via facilities in the right-of-way is subject to the Cable Act's franchising requirements.

The Mayor recently received a letter signed by the mayors of Dublin, Livermore, Pleasanton and San Ramon asking to join them in support of the CAP Act. The bill would provide a benefit to the residents of Lodi by allowing the City to use PEG funds for PEG operations instead of the General Fund and by increasing City flexibility to use these dollars to increase the amount of local programming on local access channels.

PEG funding to date has supported improvements to the audio/video facilities at the Carnegie Forum and equipment needed to broadcast City Council meetings over AT&T's U-Verse system.

APPROVED:

  
Konrad Bartlam, City Manager

**FISCAL IMPACT:** Enactment of H.R. 1746 into law will directly reduce General Fund expenses by approximately \$2,000 per year (cost of staffing camera operator to broadcast City Council meetings).

**FUNDING AVAILABLE:** Not applicable.

  
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Jeff Flood  
Communications Specialist

Attachment: Letter of support

**CITY COUNCIL**

**JOANNE MOUNCE, Mayor**  
**ALAN NAKANISHI,**  
Mayor Pro Tempore  
**LARRY D. HANSEN**  
**BOB JOHNSON**  
**PHIL KATZAKIAN**

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City Manager  
**RANDI JOHL, City Clerk**  
**D. STEPHEN SCHWABAUER**  
City Attorney

December 21, 2011

The Honorable Jerry McNerney  
1210 Longworth House Office Building  
Washington, D.C. 20515

**SUBJECT: H.R. 1746 – The Community Access Preservation Act (“CAP Act”)**

Dear Representative McNerney:

On behalf of the City of Lodi, I write to express our strong support for H.R. 1746, the Community Access Preservation Act (“CAP Act”) and urge you to sign on as a co-sponsor of this legislation.

The CAP Act protects Public, Education and Government (PEG) channels, which provide an important service in bringing local government and other programming that otherwise would not be available to communities.

Due to a lack of adequate federal protection, PEG television was severely affected in 23 states that passed statewide/state-issued cable franchising laws. These laws have had serious negative consequences for PEG television. One of these is changing the ability to use already allocated fees to support ongoing operations. Although these fees continue to be collected from subscribers by the cable operators, they are now designated for capital costs only, eliminating the ability to use them for operational overhead. The CAP Act is the Congressional remedy for this funding obstacle as it removes the distinction between capital and operational use.

In Lodi, the transition of Comcast from a local to state franchise agreement in 2009 has meant the City of Lodi's General Fund is required to provide financial support in order to continue broadcasting City Council meetings. This new expense comes at a time when the City's General Fund is under pressure due to declining revenue.

H.R. 1746 is supported by the National League of Cities, National Association of Counties and the United States Conference of Mayors, the National Association of telecommunications officers and Advisors, American Community Television, as well as several state municipal leagues.

I urge you to support the CAP Act. Thank you for what you can do to help support local PEG channels, which play a major role in providing government transparency to American communities.

Sincerely,

JoAnne Mounce  
Mayor